

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

RICHARD LEE ZIMMERMAN, . Adversary No. 09-04237-rfn
PLAINTIFF .
V. . Fort Worth, Texas
JPMORGAN CHASE & . Thursday, October 8, 2009
COMPANY, .
DEFENDANT .
.

IN RE: . Case No. 42327-rfn13
RICHARD LEE ZIMMERMAN .
DEBTOR .
.

Hearing on

Motion for Default Judgment against Vericrest
Finance, Inc., fka CIT Group Consumer Finance
filed by Plaintiff

Motion to Dismiss Adversary Proceeding
filed by Defendant JPMorgan Chase Bank, NA

Motion for Default Judgment against
JPMorgan Chase & Co. filed by Plaintiff

BEFORE THE HONORABLE RUSSELL F. NELMS
UNITED STATES BANKRUPTCY JUDGE

1 APPEARANCES:

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3 For the Plaintiff,
4 Richard Lee Zimmerman:

MR. RICHARD LEE ZIMMERMAN
4212 Calloway Drive
Mansfield, Texas 76063

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6 For PennyMac:

MS. CRISTINA PLATON CAMARATA
Brice Vander Linden & Wernick
310 Amber Lane
League City, Texas 77573

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8 Electronic Court Recorder:

MS. JENNIFER CALFEE
U.S. Bankruptcy Court
Eldon B. Mahon U.S. Courthouse
501 W. Tenth Street
Fort Worth, TX 76102-3643

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12 Transcription Service:

MS. DIANE LANCASTER
5838 Westhaven Dr.
Fort Worth, TX 76132

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16 Proceedings recorded by electronic sound recording;
17 transcript produced by transcription service.

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1 FORT WORTH, TEXAS, THURSDAY, OCTOBER 8, 2009, 2:28 P.M.

2 THE COURT: Be seated. Good afternoon. At 2:30
3 we have the *Zimmerman* case. Mr. Zimmerman, you're here
4 and you are representing yourself.

5 MR. ZIMMERMAN: Yes, I am.

6 THE COURT: Okay. And are you Ms. Camarata?

7 MS. CAMARATA: Yes, I am, Your Honor.

8 THE COURT: And you are representing?

9 MS. CAMARATA: PennyMac.

10 THE COURT: Give me a minute. PennyMac?

11 MS. CAMARATA: PennyMac, yes.

12 THE COURT: All right. I've read this motion,
13 and before I hear from the parties, I think what I would
14 like to do today is see if we can't get this case in some
15 proper procedural context. And you may have a seat,
16 Ms. Camarata, as I discuss this. For his part,
17 Mr. Zimmerman here, he wants closure. He wants finality
18 with respect to his Motion for Summary Judgment. Mr.
19 Zimmerman takes issue with PennyMac's participation in
20 this case, because he says they haven't proven that they
21 are a party in this case. But ultimately, what you want,
22 Mr. Zimmerman, is you want closure, and in order to get
23 closure, you need to have the proper party before the
24 Court.

25 So it would be one thing if we, say, booted

1 PennyMac out of this case and rendered a judgment as to
2 Chase Bank, but Chase Bank has no interest in the case.
3 That doesn't solve your problem. So if in fact PennyMac
4 is the owner and holder of the note, then they are the one
5 that you want to have bound by the judgment that you seek.
6 So, on your side, in order to get to where you want to be,
7 you need to have the right party before the Court, or else
8 we are all just spinning our wheels here.

9 Now, on PennyMac's side over here, what's
10 happened so far is that PennyMac has filed a motion to
11 dismiss the Plaintiff's complaint here, but PennyMac has
12 filed its motion and said -- and has moved to dismiss, at
13 least in part saying that we should dismiss because
14 JPMorgan is not a party-in-interest in this case. Of
15 course, PennyMac cannot here today advance the interests
16 of JPMorgan. It can only advance its own interests, and
17 so, we need to make sure that PennyMac is the right party.

18 So, I think that what -- and then there is
19 another problem that you have on your side of the case,
20 Mr. Zimmerman. As I understand it, you have filed a
21 Motion for a Summary Judgment or -- well, you've moved to
22 default JPMorgan and you've moved to default Vericrest
23 Finance, formerly known as CIT Group Finance.

24 Let me take up CIT first. The problem with the
25 motion to default CIT is that your complaint doesn't

1 allege any claims against CIT. You mention them, but your
2 complaint itself doesn't name them as a party. And so, I
3 don't know how I can default CIT in light of the fact that
4 they haven't been named as a party. I don't know if
5 they've been served or if they haven't been served, but I
6 know that your complaint itself doesn't name them as a
7 party. You say parties, yourself, and Defendant JPMorgan
8 Chase and Company, then you go into your factual
9 allegations.

10 So, I think I can set aside the Motion for
11 Default Judgment against CIT right now, because they are
12 just not a party to this case. Now, maybe they've been
13 served, but, you know, getting served with something that
14 doesn't name you as a defendant is not really going to be
15 very effective to put you on notice that you need to
16 defend. So we can't grant that today. You would need to
17 amend your complaint in order for me to have a default.

18 MR. ZIMMERMAN: Okay. That actually is not a --
19 there wasn't a complaint against Vericrest. Vericrest was
20 just to disallow their proof of claim, and what happened
21 was, CIT is now Vericrest.

22 THE COURT: Uh-huh.

23 MR. ZIMMERMAN: And Vericrest, they have a proof
24 of claim, and I was just trying to get that disallowed
25 because their proof of claim is wrong or doesn't apply.

1 THE COURT: Okay. So this, the Motion for
2 Default Judgment --

3 MR. ZIMMERMAN: Was just basically more of a
4 motion to disallow their proof of claim.

5 THE COURT: But to disallow their proof of claim
6 in the bankruptcy case.

7 MR. ZIMMERMAN: Right.

8 THE COURT: As part of your adversary complaint,
9 though, you indicate that they also have a lien on the
10 property.

11 MR. ZIMMERMAN: They do not have a lien. They
12 had a lien, but no longer.

13 THE COURT: Okay. Do they agree with the notion
14 that they don't have a lien, or did they file a secured
15 proof of claim?

16 MR. ZIMMERMAN: No, what happened was, they
17 actually filed a secure proof of claim, a secured proof of
18 claim, except they used -- probably we ought to just --

19 THE COURT: Okay. Well, don't worry about that.
20 Let me go into something here with that. In this district
21 -- and this all gets back to what it is that you want to
22 do and accomplish in this adversary proceeding. In this
23 district, there is a decision by Judge Houser, Chief
24 Judge, the Chief Bankruptcy Judge of this District, to the
25 effect that when you object to the claim of a secured

1 creditor in your Chapter 13 bankruptcy case, and that
2 objection is sustained, the effect of that is, is that
3 they don't get to participate in your bankruptcy case.
4 They get no distributions in your bankruptcy case at all.
5 But assuming that they have a good perfected lien, your
6 objection to their claim doesn't make the lien go away.

7 That's a case called *Kleibrink* that was decided
8 by Judge Houser. It's now up at the Fifth Circuit. It's
9 been argued, I believe, before the Fifth Circuit and we
10 can expect a ruling from them sometime in the next 12
11 months. I don't know when we're going to get that. But
12 that comes back to, you know, what do you want with
13 respect to CIT? If you want to make CIT's claim go away,
14 then according to the *Kleibrink* case, they need to be in
15 an adversary proceeding as well. So if you want to make
16 their claim go away, we can make their claim go away
17 because they didn't respond to your objection to their
18 claim. And I take it that's what you mean by this Motion
19 for Default Judgment.

20 MR. ZIMMERMAN: Right.

21 THE COURT: Okay. So we don't grant default
22 judgments when it comes to these. It's just what we do,
23 is that we enter an order sustaining an objection to
24 claim.

25 MR. ZIMMERMAN: Okay.

1 THE COURT: So if you've done that, then we'll --
2 and they haven't answered and they haven't responded, then
3 we'll sustain an order to disallowance of their claim in
4 this case, but that may be of limited value to you. Okay?

5 MR. ZIMMERMAN: Okay.

6 THE COURT: Have you done the same thing with
7 JPMorgan Chase?

8 MR. ZIMMERMAN: No, JPMorgan Chase was an
9 adversarial complaint.

10 THE COURT: Okay. So, in that case, you really
11 do want a default judgment against them.

12 MR. ZIMMERMAN: Yes.

13 THE COURT: Well, we can probably grant a default
14 judgment against JPMorgan Chase Bank, but in light of the
15 fact that JPMorgan Chase Bank doesn't -- isn't the owner
16 and holder of the note anymore, at least according to
17 Penny Bank, I don't know that that's going to get you
18 where you want to be.

19 Here's what I think needs to happen in the
20 adversary proceeding. Assuming that Penny Bank contends
21 that it is in fact the proper party in this case, then
22 they can file a motion to intervene in the case, to be
23 substituted as a defendant in the case for JPMorgan. And
24 we can put that in the record, and they may officially
25 become a Defendant in the case.

1 Now, you know, at that point, Mr. Zimmerman, I
2 guess you've got a choice to make. You can either say,
3 "Gee, I don't really think that they are the defendant in
4 this case. I don't think that they really are the proper
5 person and I want to fight their assertion that they are
6 the proper person," or you can just accept the fact that
7 they contend that they are the proper party in this case,
8 and that by prosecuting your case against them, that you
9 will get the degree of finality that you want. It's kind
10 of up to you.

11 Now, I don't know why Penny Bank would
12 voluntarily want to come into this court and to fight this
13 thing if they didn't really have any interest in it. You
14 know, there may be things out there that I don't know
15 about or just plain don't understand. But usually it is
16 not the case that parties who don't have an interest in
17 litigation want to be involved in it. Usually, it's just
18 the opposite.

19 So you can challenge Penny Bank's entitlement to
20 be a party in this case if you want to, or you can just,
21 in response to their motion to be substituted as a party,
22 you can accept the fact that they are the proper party in
23 interest and resolve it that way. Okay?

24 MR. ZIMMERMAN: Okay.

25 THE COURT: But I think the first thing that

1 needs to happen, and I don't know, you can tell me, Ms.
2 Camarata, maybe -- I mean, maybe you don't want to file a
3 motion to intervene, but the fact that you are here in
4 court today tells me that you are concerned enough about
5 the procedural posture of this case that you think you
6 need to be in the case in order to protect your interests.
7 Am I right about that?

8 MS. CAMARATA: That's correct, Your Honor. It
9 was kind of convoluted how the loan came, and so PennyMac
10 wasn't exactly sure when I filed the motion. They just
11 wanted to have the adversary heard. There are some
12 current state court actions in the state of Colorado
13 regarding this property as well, and actually, probably
14 the best thing would be to remove those up to federal
15 court and have it all in one thing.

16 Both CIT and PennyMac are involved in the state
17 court litigation as well, and so that's kind of how it
18 came to me, is PennyMac was in the state court litigation.
19 PennyMac found out about this one, and the attorney in
20 Colorado wanted me to file something in this one. I
21 couldn't file an answer since I don't represent JPMorgan
22 Chase, so I filed a motion to dismiss.

23 THE COURT: Okay. What do you think about CIT,
24 Mr. Zimmerman? I take it that you would like to get some
25 type of final disposition as to them as well, right?

1 MR. ZIMMERMAN: Yes, they -- on their proof of
2 claim, I would like -- actually, this is -- probably the
3 best thing for me to do is, I can start from where --
4 because, you know, she is not familiar with it. I've been
5 living this thing for three years. Actually, we financed
6 my home on October 14th, 2005.

7 THE COURT: Yeah, I've read all the pleadings. I
8 know what's going on. I understand the allegations in
9 your complaint and what you're seeking here.

10 MR. ZIMMERMAN: Okay.

11 THE COURT: But part of what you say in your
12 complaint is, you say that First National Bank of Arizona
13 and CIT Group failed to timely deliver the material
14 disclosures. That indicates to me that CIT Group probably
15 ought to be a party in this case. So I think that what
16 you need to do is, you need to -- you need to file an
17 amended complaint, and if you want to keep JPMorgan in
18 here as a defendant in your amended complaint, you could
19 do it. You could add Penny Bank, you could add CIT, and
20 you can seek declaratory relief with respect to all of
21 those parties. Now, once you file that complaint, the
22 summons and a scheduling order are going to have to be
23 filed -- have to be served, not only on Penny Bank, but
24 you'll need to serve it on CIT Corp.

25 MR. ZIMMERMAN: Okay.

1 THE COURT: And once that happens, one of those
2 new defendants probably would want to, and maybe it's Ms.
3 Camarata's client, to remove the state court cases that
4 are out in Colorado to the federal, whatever district they
5 are pending in, federal district court or bankruptcy court
6 in Colorado, and move to have them transferred here to
7 this Court. And I can't think of any reason why either
8 the district court or the bankruptcy court would deny
9 that.

10 MR. ZIMMERMAN: Well, actually, I got a notice, I
11 think, that the state court action was dismissed earlier
12 this year for lack of prosecution.

13 THE COURT: Okay. So then there may not be
14 anything to remove. If there is something active to
15 remove, it can be removed. If there's not, it's not. But
16 those claims and causes of action, to the extent that they
17 involve you one way or the other, are probably stayed
18 anyway. And so, it may very well be that upon further
19 analysis, that there is no need to remove them because we
20 can, in this court, deal with all of these issues, and by
21 dealing with them here, it might moot anything that's
22 pending in state court which is otherwise stayed by virtue
23 of the automatic stay in your bankruptcy.

24 So, I think that that's what we need to do.
25 There doesn't need to be -- and you can make other changes

1 to your amended complaint if you want to, Mr. Zimmerman,
2 but I think that the key thing that you need to do is to
3 add these two new entities, make sure that they get served
4 with a copy of your complaint, and see how they respond.
5 It may very well be that PennyMac at that time comes in
6 here and makes the exact same -- argues the same motion to
7 dismiss that they've urged today. But right now, they are
8 not really a party in the case, and so they can't really
9 come in and say the motion is not well taken as to
10 somebody who is a party.

11 So, I think ultimately what the parties all want
12 is the same thing, and that is a final, effective
13 resolution of this issue. If we took care of JPMorgan
14 today, I can't even tell you what effect that may or may
15 not have. Is it binding on successors in interest,
16 especially if they appear here? I don't know. It may be
17 or it may not be. All I know is, that would make some
18 interesting issues for an appeal somewhere down the line.

19 I just think it's in the best interest of
20 everybody to have all the right parties in front of this
21 Court, who are here procedurally, and then, one way or the
22 other, one side will prevail, but it will all be right
23 here, and if the other side doesn't like it, we know --
24 they all know where the proper appeals court is. It
25 happens to be right across the hall.

1 So, that will just make it a lot easier, and
2 then, that way, all parties can get the degree of finality
3 that they seek. Okay? But the starting point for that
4 is, I think, Mr. Zimmerman, for you to file an amended
5 complaint, serve your amended complaint, and then for us
6 to take up any answers or motions to dismiss in the
7 context of that amended complaint that have the proper
8 parties in this court. Okay?

9 Now, I will say one other thing to Ms. Camarata
10 here. I know that this whole MERS system is confusing, to
11 say the least. Just one thing I noticed about the MERS
12 assignment of mortgage is that MERS, as nominee for
13 PennyMac Loan Services, LLC, assigned the loan to PennyMac
14 Loan Services, LLC.

15 MS. CAMARATA: Correct, Your Honor. MERS is just
16 kind of like a holding tank for all these notes and deeds
17 of trust. I do have with me the actual allonge to the
18 note from the FDIC. I have a copy for Mr. Zimmerman. I
19 have a copy for the Court, if you want to put that in the
20 file.

21 THE COURT: For right now, I think all you need
22 to do is satisfy Mr. Zimmerman. If he's not satisfied,
23 then we can take up that issue at the appropriate time.
24 But the only thing about that is, I just didn't know -- I
25 don't know why, and I understand -- I understand how MERS

1 is supposed to work. I know it's been a very confusing
2 system for courts throughout the country. I just didn't
3 know why Penny -- in effect, PennyMac Loan Services would
4 need to assign it to PennyMac Loan Services.

5 MS. CAMARATA: PennyMac actually acquired the
6 loan in December of 2008. It wasn't until after that that
7 they got the assignment into MERS, so that's why they were
8 doing it as attorney for itself.

9 THE COURT: Okay. I see. Oh, okay.

10 MS. CAMARATA: Because the other entities were
11 already gone by that time.

12 THE COURT: So there --

13 MS. CAMARATA: But it came -- you know, it had to
14 go through the receivership. It went back and forth from
15 the receiver to the -- to either Nevada or Arizona. I
16 can't remember right now, although I've got all the
17 allonges. So this note has been back and forth a couple
18 of times, and there is nobody there any longer at either
19 Nevada or Arizona. They both went into the receivership,
20 and so that's why they did the assignment, and they just
21 recently did that assignment, the MERS assignment.

22 THE COURT: Okay. Yeah, now I understand what
23 you're trying to say about that. Well, I have -- a close
24 friend of mine is an employee of Fannie Mae, and we
25 happened to be talking about the whole MERS system just on

1 Saturday of last week. So, believe me, I know the issues
2 with that.

3 MS. CAMARATA: You know more than you need or
4 wanted to know.

5 THE COURT: That's right. Okay. Okay, Mr.
6 Zimmerman, do you have a sense now of what you need to do?

7 MR. ZIMMERMAN: Yeah.

8 THE COURT: Okay. If you will do that, and how
9 long do we need to --

10 MR. ZIMMERMAN: The thing that -- the thing that
11 is so confusing for me is that there really, MERS -- MERS,
12 once the loan was rescinded back in March of 2006 when
13 JPMorgan Chase actually was the assignee from First
14 National Bank of Arizona, basically that security
15 interest, that deed of title, is void by law, so that ends
16 their participation at all in this. But I think what I
17 will do is, I will amend the complaint, because this loan
18 ended on March 4th, 2006.

19 THE COURT: I understand that's your position,
20 sure.

21 MR. ZIMMERMAN: And so what happens, if that did
22 happen, then any assignments after that, anything that
23 happened after JPMorgan Chase owned that loan, are void.
24 It ends with JPMorgan Chase. There is no way it can go
25 any further because there's nothing to get.

1 THE COURT: Then you can keep JPMorgan Chase in
2 there, and then at the appropriate time, we will, if they
3 don't want to answer and respond to this, then we'll
4 default JPMorgan Chase out of this, and so, I mean, they
5 will be taken care of. But we have another party in here
6 who is saying that we really do own this note and hold the
7 note --

8 MR. ZIMMERMAN: Yeah.

9 THE COURT: -- and we don't want to be prejudiced
10 by anything that happens in this case as to JPMorgan
11 Chase. And so, you know, believe me, if you've got
12 somebody out there taking that position, and if you are
13 right, then you want your judgment to take care of them as
14 well, right?

15 MR. ZIMMERMAN: Right.

16 THE COURT: Okay.

17 MR. ZIMMERMAN: And then, also, I just want to go
18 on the record that, in their Motion to Dismiss, they said
19 in paragraph, I think it was paragraph -- I don't want to
20 -- I'm going to check my notes real quick -- in paragraph
21 2 that was filed -- no.

22 THE COURT: Yeah, I recall that you said in your
23 Motion to Strike --

24 MR. ZIMMERMAN: Yeah, they -- because what
25 happened is, the FDIC didn't take -- didn't get this loan

1 until July 28th. So JPMorgan Chase was actually the
2 holder when it was rescinded.

3 THE COURT: You know what you have happen a lot
4 of time here, and especially with mortgages these days and
5 notes and all of the assignments that go back and forth,
6 and then you've got an intervening receivership by the
7 FDIC somewhere along the line here, you have parties and
8 ultimately lawyers who are out there struggling to do the
9 same thing you are trying to do, Mr. Zimmerman, to figure
10 out who is on first and how did we get to where we are
11 here. So they are operating on the best information that
12 they have. Now, you know, I don't purport to speak for
13 Ms. Camarata in saying that, but the fact of the matter
14 is, is that, you know, as I say, normally you don't have
15 parties coming in here wanting to be part of a fight in
16 which they are not even named as a party.

17 So I think, I would imagine, but I can always be
18 proven wrong, and I keep my mind open as to this stuff,
19 but I usually give people the benefit of the doubt until
20 proven otherwise, and that is, I usually assume that they
21 are all doing the best that they can based upon the
22 information that they have at that particular time. And
23 if I'm wrong about that, then I'm always prepared to say
24 I'm wrong about it and just take appropriate measures to
25 cure that problem. But I would bet you that -- I bet you

1 there has been a lot of rushing around behind the scenes
2 here with respect to note holders and the like, trying to
3 figure out just what's going on and who has what, because,
4 believe me, been there and done that and I know how this
5 stuff works. So, as I say, if it's wrong and we have some
6 violations of Rule 11 here, we'll deal with it at that
7 appropriate time, but we'll just have to see.

8 MR. ZIMMERMAN: Yeah, that's actually been my
9 frustration for three years, is, this seems like a hot
10 potato. I've rescinded the loan. It's moved from -- I
11 mean, I have like copies of allonges that -- it's just --

12 THE COURT: It's not a hot potato anymore, Mr.
13 Zimmerman, because I've caught the potato and I'm holding
14 the potato right here.

15 MR. ZIMMERMAN: Okay.

16 THE COURT: And I'm not passing it on to anyone
17 else. This issue is going to be resolved in this Court.

18 MR. ZIMMERMAN: Okay.

19 THE COURT: Okay?

20 MR. ZIMMERMAN: I appreciate that.

21 THE COURT: All right.

22 MR. ZIMMERMAN: Thanks.

23 THE COURT: Okay, thank you. We'll be adjourned.

24

25 (Proceedings adjourned at 2:52 p.m.)

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I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in
the above-entitled matter.

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/s/Diane Lancaster

Diane Lancaster

November 18, 2009

Date

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